

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0168P
Use Tax
Calendar Years 1999 and 2000

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ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer is a manufacturer. Upon audit it was discovered that the taxpayer failed to remit use tax on clearly taxable items such as office computers, shop supplies, material handling equipment, and other miscellaneous items.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer requests that the penalty assessed be waived because the additional liability was not due to a deliberate or negligent failure on its part to assess tax. Taxpayer states that the omission related to the more complex application of the M&E exemption to various aspects of its manufacturing operations, rather than more easily ascertainable omissions.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The taxpayer failed to self-assess and remit tax on more than fifty percent (50%) of items it should have self-assessed tax upon. Most items in the audit are clearly taxable and taxpayer has not provided reasonable cause to allow the department to waive the penalty.

FINDING

Taxpayer's protest is denied.